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# Lopez v. State Appellant's Reply Brief Dckt. 39739

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**LUIZ LOPEZ,**

**Petitioner-Appellant,**

V.

STATE OF IDAHO,

**Respondent.**

**No. 39739-2011**

**Ada Co. Case No.  
CV-2011-13266**

**APPELLANT'S REPLY BRIEF**

## REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA

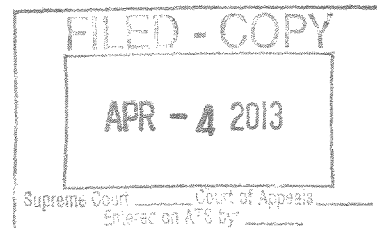
**HONORABLE JONATHAN BRODY**  
District Judge

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## **II. STATEMENT OF THE CASE**

### **A. Nature of the Case**

The statement of the facts and course of proceedings were previously articulated in the Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto, other than the following restatement of facts.

### **B. Statement of the Facts & Course of Proceedings**

Mr. Lopez's position in his Petition for Post Conviction Relief was that the State failed to disclose in a timely way exculpatory information regarding violations by the state lab of the state lab procedures that would have assisted him in defending his case, including, but not limited to, attacking the credibility of the state laboratory which conducted the testing on the drugs he was convicted of possessing.

The state had access to the information that the Idaho State Lab facility at Pocatello had violated by maintaining an ongoing, unauthorized supply of narcotics outside the practices of the Forensics Quality Manual, and without proper documentation, tracking and auditing. This practice had gone on for years, dating back to the 80's and 90's and forward. (See, eg., Exhibit 6, pg. 7, paragraph "I", pg. 9, paragraph "6(A)" – pg. 10, paragraph "6(C)", , pg. 11 , paragraph "C", During audits, scientists at that lab would hide the unauthorized drugs from auditors. (See, Exhibit 6, pg. 1, paragraph "1", pg. 2, paragraph "L"). Ultimately, the abuses were discovered. (See, Exhibits 1-6).

Also, it is Mr. Lopez's position that that fact that the audit process at the state level did not reveal the deceptive practices in Pocatello calls into question the testing in his case that was performed at the Meridian office of the same Idaho State Lab

organization, and would have allowed an attack on the credibility of the lab that performed the testing in his case.

### **III. ISSUE PRESENTED ON APPEAL**

- A. Did the district court err when it dismissed Mr. Lopez's Petition for Post-Conviction Relief concerning the state's failure to disclose exculpatory evidence?**

### **IV. ARGUMENT**

#### **I.**

#### **The District Court Erred When It Dismissed Mr. Lopez's Petition For Post-Conviction Relief**

Mr. Lopez's position in his Petition for Post Conviction Relief was that the State failed to disclose in a timely way exculpatory information regarding violations by the state lab of the state lab procedures that would have assisted him in defending his case, including, but not limited to, attacking the credibility of the state laboratory which conducted the testing on the drugs he was convicted of possessing.

To restate his position specifically, it was Mr. Lopez's position that had the state had access to the information that the state lab facility at Pocatello had violated by maintaining an ongoing, unauthorized supply of narcotics outside the practices of the Forensics Quality Manual, and without proper documentation, tracking and auditing. During audits, scientists at that lab would hide the unauthorized drugs from auditors. Ultimately, the abuses were discovered. This practice had gone on for years, dating

back to the 80's and 90's and forward. (See, eg., Exhibit 6, pg. 7, paragraph "I", pg. 9, paragraph "6(A)" – pg. 10, paragraph "6(C)", , pg. 11 , paragraph "C", During audits, scientists at that lab would hide the unauthorized drugs from auditors. (See, Exhibit 6, pg. 1, paragraph "1", pg. 2, paragraph "L").

Therefore, it is Mr. Lopez's position that the abuses, and then failure of the audit process at the state level did not reveal the deceptive practices in Pocatello calls into question the credibility of the Idaho State Police Forensic lab, and therefore the testing in his case, and it would have allowed a substantial attack on the credibility of the lab that performed the testing in his case as that lab was part of the ISP Lab organization which engaged in the reported abuses.

As noted in Appellant's opening brief, a petition for post-conviction relief under the Uniform Post Conviction Procedure Act (UPCPA) is civil in nature. *Workman v. State*, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007). Pursuant to Idaho Code § 19-4903, the petitioner must prove the claims upon which the petition is based by a preponderance of the evidence. *Workman*, 144 Idaho at 522, 164 P.3d at 802.

Upon review of a district court's denial of a petition for post-conviction relief when an evidentiary hearing has occurred, Idaho appellate courts will not disturb the district court's factual findings unless they are clearly erroneous. *McKinney v. State*, 133 Idaho 695, 700, 992 P.2d 144, 149 (1999), *citing* I.R.C.P. 52(a); *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct. App.1990). When reviewing mixed questions of law and fact, the appellate court defers to the district court's factual findings supported by substantial evidence, but freely reviews the application of the relevant law to those facts. *Id.*, *citing* *Young v. State*, 115 Idaho 52, 54, 764 P.2d 129, 131 (Ct.

App.1988).

As stated in the previous briefing, the request for a new trial in a post-conviction proceeding based on newly discovered evidence under I.C. § 19-4901(a)(4) is the same as a motion for new trial subsequent to a jury verdict. *Rodgers v. State*, 129 Idaho 720, 723, 932 P.2d 348, 351 (1997). To be entitled to relief on a newly discovered evidence claim, the petitioner must prove (1) that the evidence is newly discovered and was unknown to the defendant at the time of trial; (2) that the evidence is material, not merely cumulative or impeaching; (3) that it will probably produce an acquittal; and (4) that failure to learn of the evidence was due to no lack of diligence on the part of the defendant. *State v. Drapeau*, 97 Idaho 685, 691, 551 P.2d 972, 978 (1976); *Cunningham v. State*, 117 Idaho 428, 433, 788 P.2d 243, 248 (Ct.App.1990).

In this case, Mr. Lopez argued that he had received new evidence that the state violated *Brady v. Maryland*, 873 U.S. 83 (1963) by failing to disclose exculpatory evidence as required. *Brady* evidence includes evidence that would allow a defendant to impeach the credibility of a state witness. *Banks v. Dretke*, 540 U. S. 668, 672-673 (2004).

The Respondent has argued that Mr. Lopez has failed to show that: (1) the evidence was exculpatory or impeaching; (2) the improperly failed to disclose the evidence, or that the evidence was suppressed; and (3) Mr. Lopez failed to show prejudice. *State v. Shackelford*, 150 Idaho 355, 380, 247 P.3d 582 (2010).

1. Mr. Lopez demonstrated that the evidence was exculpatory and impeaching.

Mr. Lopez's position in his Petition for Post Conviction Relief was that the State failed to disclose in a timely way exculpatory information regarding violations by the state lab of the state lab procedures that would have assisted him in defending his case, including, but not limited to, attacking the credibility of the state laboratory which conducted the testing on the drugs he was convicted of possessing.

The district court ruled that the fact that Mr. Lopez could not absolutely prove that abuses had happened in his case with regard to work in the Meridian office of the Idaho State Lab meant that the state's failure to disclose that evidence did not provide an avenue for relief under *Brady v. Maryland*, 873 U.S. 83 (1963). However, *Brady* requires evidence including evidence that would allow a defendant to impeach the credibility of a state witness be disclosed by the state. *Banks v. Dretke*, 540 U. S. 668, 672-673 (2004). It is Mr. Lopez's position that the non-disclosed evidence regarding ongoing violations at the Idaho State Lab would have allowed him to offer impeachment evidence attaching the credibility of the Idaho State Lab, regardless of which particular office conducted the abuses that were ultimately disclosed. Thus, Mr. Lopez argues that the district court erred.

2. The Evidence was not disclosed as required by *Brady* and was therefore "suppressed".

The Respondent apparently argues that the impeachment evidence of the irregularities at the Idaho State Lab was "not suppressed" because, the Respondent argues, that the evidence was not possessed by a government agent having a significant role in the investigation or prosecution of the offense. (See Respondent's Brief, pages 6-7).



Exhibit 3, admitted in district court, is a letter from the Idaho State Police regarding irregularities at the Idaho State Patrol Forensic Lab. That lab conducts the drug testing that is used in the prosecution of, among other types of cases, drug cases such as Mr. Lopez's. The duty of disclosure under *Brady* extends not only to the prosecutor, but of all of the government agents having a significant role in investigating and presenting the offense. *State v. Avelar*, 132 Idaho 775, 781, 979 P.2d 648, 654 (1999). Thus, as the Idaho State Patrol's forensic lab is the organization performing the testing in cases such as Mr. Lopez's, Mr. Lopez contends that the Idaho State Patrol had a duty to disclose these irregularities which impact the credibility of the lab organization. As is apparent from Exhibit 6, the violations of policy and irregular practices occurred before, during and after the time Mr. Lopez's case was being prosecuted. (Exhibit 6, pgs. 2-10.).

Mr. Lopez contends that he was prevented from attacking the lab work in his case via attacking the credibility of the lab work performed by the same organization that violated state lab procedures over a series of years, which procedures were not detected via audit during those years, again impeaching the credibility of the testing organization. Therefore, Mr. Lopez contends that the withheld evidence was material, exculpatory and impeaching evidence that should have been disclosed under *Brady* and the other cases discussed above.

3. Mr. Lopez demonstrated prejudice.


Mr. Lopez contends that that withheld evidence was material evidence carried a reasonable possibility that its disclosure and use for impeachment at trial would have led to an acquittal. It is Mr. Lopez's position that the long lasting history of irregularities

apparent from the withheld evidence would have impacted the credibility of the testing organization that did the testing work in his case. Mr. Lopez contends that Because he was prevented from making those arguments, he argues that he should be provided a new trial.

#### **V. CONCLUSION**

Based on the above, Mr. Lopez respectfully requests that this Court vacate the district court's order dismissing his petition for post-conviction relief.

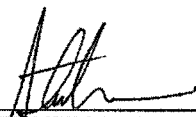
DATED this 3 day of April, 2013.

  
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STEPHEN D. THOMPSON  
Contract Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3 day of APRIL, 2013, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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